IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 1946 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 14/09/2004 in WP NO : 8939 OF 2004 on the file of the High Court.)

Between:

M. Aswartha Narayana Swamy, S/o. M. Kondappa,
R/o. 13/2-264, Ramachandra Nagar, Anantapur, Anantapur District.

..... APPELLANT

AND

1 The Deputy Registrar of Cooperative Societies,

Anantapur, Anantapur District.
2 Sodanapalli Primary Agricultural Co-operative

Society, Singaramala Mandal, Anantapur District,
Rep. by its Chairman

.....RESPONDENTS

Counsel for the Appellant: MR.V.SRINIVAS

Counsel for the Respondent Nos.1 & 2: GP FOR COOPERATION

The Court made the following :

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT APPEAL NO.1946 OF 2004

JUDGMENT: (per the Hon'ble Smt Justice T.Meena Kumari)

Dissatisfied with the order of dismissal dated 14-09-2004 passed by the learned single Judge in W.P.No.8939 of 2004, the present writ appeal has been filed.

The factual background can be adumbrated concisely as follows:

The appellant, who was the Ex-Secretary of the 2nd respondent-Society, was placed under suspension by the 2nd respondent *vide* proceedings dated 29-11-2003 on the premise of misappropriation of funds to a tune of Rs.6,80,061-62ps which was detected during the course of audit under Section 50 of the AP Cooperative Societies Act, 1964 (for short 'the Act'). Consequently, the 1st respondent issued show cause notice dated 26-12-2003 under Section 60 (1) of the Act. Pursuant to the

same, he filed a representation dated 13-01-2004 seeking time for filing objections. Without considering the representation, the 1st respondent passed the impugned order dated 24-01-2004. Feeling aggrieve d by the said order, he preferred W.P.No.8939 of 2004 and the same was dismissed by an order dated 14-09-2004. Challenging the same, the writ appeal has been filed.

Heard the learned counsel on either side.

The learned counsel for the appellant contended that in spite of the representation filed by the appellant seeking time for filing objections, the 1st respondent without affording any opportunity passed the order impugned.

Relying on the provisions of sub-Section (1) of Section 60 of the Act, it is further contended that no order shall be passed against a person without affording any opportunity and therefore, the order impugned is in violation of the said provisions and it would amount to violation of principles of natural justice inasmuch as in the instant case, the appellant was not afforded any opportunity to offer his explanation before passing the order impugned.

On the other hand supporting the order impugned, it is contended by the learned counsel for the respondents that the order of the learned single Judge does not warrant any interference by this Court.

On the rival contentions, before going into the merits thereon, it is relevant to go through the provisions of Section 60 (1) of the Act, which is extracted hereunder:

> 60.Surcharge: (1) Where in the course of an audit under Section 50 or any inquiry under Section 51 or an inspection under Section 52 or Section 53, or the winding up of a society it appears that any person who is or was entrusted with the organizations, affair or management of the society or any past or present officer or servant of the society has mis-appropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws the Registrar himself, or any person specially authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part there of with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust, or willful negligence as

the Registrar or the person authorized as aforesaid thinks just;

Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.

We have perused the order impugned and the material available on record. It is observed by the learned Single Judge that in the absence of any explanation from the appellant in response to the show cause notice, there is no other go for the 1st respondent except pass final orders. At this stage it is not out of place to mention here that it is the case of the appellant that he made a representation to the 1st respondent on 13-1-2004, a copy of which was found in the material papers, requesting him to furnish a copy of audit report to him and also grant him 30 days time to submit his objections. The said provisions also make it crystal clear that a person shall be given an opportunity for filing his explanation before passing an order. There is no dispute with regard to this aspect. If that being the case, in the light of the provisions of Section 60 (1) of the Act, we are of the considered view that the order passed by the 1st respondent amounts to violation of the above provisions and depriving the opportunity to the appellant to submit his representation prior to passing the order by the1st respondent amounts to violation of principles of natural justice.

In the above facts and circumstances of the case, and in view of the mandate provisions of Section 60 (1) of the Act, we have no hesitation to hold that the order of the 1st respondent is liable to be set aside and consequently the order of the learned single Judge impugned herein is also liable to be set aside.

Under the aforesaid circumstances, this appeal is allowed and the order of the learned Single Judge is set aside. Consequently, the order of the 1st respondent is quashed. However, it is made clear that the appellant is directed to submit his explanation within a period of four weeks from the date of receipt of a copy of this Judgment and on such explanation, the respondent shall pass appropriate orders in accordance with law, within a period of three weeks thereafter.

At this stage, the learned counsel for the appellant submits that the 1st respondent may be directed to furnish the copies of the record, basing on which the show cause notice has been issued. On the other hand, while opposing the same, it is submitted

by the learned Government Pleader that it may not be possible because the audit report contains the volumes of papers.

Hence, the respondent is directed to allow the appellant to peruse the records, if he so desires.

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(T.MEENA KUMARI,J)

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(S.ANANDA REDDY,J)

08-12-2004

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To

1 The Deputy Registrar of Cooperative Societies,

Anantapur, Anantapur District.
2 Sodanapalli Primary Agricultural Co-operative

Society, Singaramala Mandal, Anantapur District,
Rep. by its Chairman

3 Two CCs to GP for Cooperation, High Court buildings,

Hyderabad.

5 Two CD copies.